

1 JOSEPH P. RUSSONIELLO (CABN 44332)  
2 United States Attorney

3 BRIAN J. STRETCH(CABN 163973)  
4 Criminal Chief, San Francisco Division  
5 450 Golden Gate Avenue  
6 San Francisco, California 94102  
7 Telephone: (415) 436-7251

8 ROBERT S. ANDERSON (MBN 3099 )  
9 Special Assistant United States Attorney  
10 105 E. Pine Street, Second Floor  
11 Missoula, MT 59803  
12 Telephone: 406-829-3322

13 Attorneys for Plaintiff

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
5510  
5511  
5512  
5513  
5514  
5515  
5516  
5517  
5518  
5519  
5520  
5521  
5522  
5523  
5524  
5525  
5526  
5527  
5528  
5529  
5530  
5531  
5532  
5533  
5534  
5535  
5536  
5537  
5538  
5539  
55310  
55311  
55312  
55313  
55314  
55315  
55316  
55317  
55318  
55319  
55320  
55321  
55322  
55323  
55324  
55325  
55326  
55327  
55328  
55329  
55330  
55331  
55332  
55333  
55334  
55335  
55336  
55337  
55338  
55339  
55340  
55341  
55342  
55343  
55344  
55345  
55346  
55347  
55348  
55349  
55350  
55351  
55352  
55353  
55354  
55355  
55356  
55357  
55358  
55359  
55360  
55361  
55362  
55363  
55364  
55365  
55366  
55367  
55368  
55369  
55370  
55371  
55372  
55373  
55374  
55375  
55376  
55377  
55378  
55379  
55380  
55381  
55382  
55383  
55384  
55385  
55386  
55387  
55388  
55389  
55390  
55391  
55392  
55393  
55394  
55395  
55396  
55397  
55398  
55399  
553100  
553101  
553102  
553103  
553104  
553105  
553106  
553107  
553108  
553109  
553110  
553111  
553112  
553113  
553114  
553115  
553116  
553117  
553118  
553119  
553120  
553121  
553122  
553123  
553124  
553125  
553126  
553127  
553128  
553129  
553130  
553131  
553132  
553133  
553134  
553135  
553136  
553137  
553138  
553139  
553140  
553141  
553142  
553143  
553144  
553145  
553146  
553147  
553148  
553149  
553150  
553151  
553152  
553153  
553154  
553155  
553156  
553157  
553158  
553159  
553160  
553161  
553162  
553163  
553164  
553165  
553166  
553167  
553168  
553169  
553170  
553171  
553172  
553173  
553174  
553175  
553176  
553177  
553178  
553179  
553180  
553181  
553182  
553183  
553184  
553185  
553186  
553187  
553188  
553189  
553190  
553191  
553192  
553193  
553194  
553195  
553196  
553197  
553198  
553199  
553200  
553201  
553202  
553203  
553204  
553205  
553206  
553207  
553208  
553209  
553210  
553211  
553212  
553213  
553214  
553215  
553216  
553217  
553218  
553219  
553220  
553221  
553222  
553223  
553224  
553225  
553226  
553227  
553228  
553229  
553230  
553231  
553232  
553233  
553234  
553235  
553236  
553237  
553238  
553239  
553240  
553241  
553242  
553243  
553244  
553245  
553246  
553247  
553248  
553249  
553250  
553251  
553252  
553253  
553254  
553255  
553256  
553257  
553258  
553259  
553260  
553261  
553262  
553263  
553264  
553265  
553266  
553267  
553268  
553269  
553270  
553271  
553272  
553273  
553274  
553275  
553276  
553277  
553278  
553279  
553280  
553281  
553282  
553283  
553284  
553285  
553286  
553287  
553288  
553289  
553290  
553291  
553292  
553293  
553294  
553295  
553296  
553297  
553298  
553299  
553300  
553301  
553302  
553303  
553304  
553305  
553306  
553307  
553308  
553309  
553310  
553311  
553312  
553313  
553314  
553315  
553316  
553317  
553318  
553319  
553320  
553321  
553322  
553323  
553324  
553325  
553326  
553327  
553328  
553329  
553330  
553331  
553332  
553333  
553334  
553335  
553336  
553337  
553338  
553339  
553340  
553341  
553342  
553343  
553344  
553345  
553346  
553347  
553348  
553349  
553350  
553351  
553352  
553353  
553354  
553355  
553356  
553357  
553358  
553359  
553360  
553361  
553362  
553363  
553364  
553365  
553366  
553367  
553368  
553369  
553370  
553371  
553372  
553373  
553374  
553375  
553376  
553377  
553378  
553379  
553380  
553381  
553382  
553383  
553384  
553385  
553386  
553387  
553388  
553389  
553390  
553391  
553392  
553393  
553394  
553395  
553396  
553397  
553398  
553399  
553400  
553401  
553402  
553403  
553404  
553405  
553406  
553407  
553408  
553409  
553410  
553411  
553412  
553413  
553414  
553415  
553416  
553417  
553418  
553419  
553420  
553421  
553422  
553423  
553424  
553425  
553426  
553427  
553428  
553429  
553430  
553431  
553432  
553433  
553434  
553435  
553436  
553437  
553438  
553439  
553440  
553441  
553442  
553443  
553444  
553445  
553446  
553447  
553448  
553449  
553450  
553451  
553452  
553453  
553454  
553455  
553456  
553457  
553458  
553459  
553460  
553461  
553462  
553463  
553464  
553465  
553466  
553467  
553468  
553469  
553470  
553471  
553472  
553473  
553474  
553475  
553476  
553477  
553478  
553479  
553480  
553481  
553482  
553483  
553484  
553485  
553486  
553487  
553488  
553489  
553490  
553491  
553492  
553493  
553494  
553495  
553496  
553497  
553498  
553499  
553500  
553501  
553502  
553503  
553504  
553505  
553506  
553507  
553508  
553509  
553510  
553511  
553512  
553513  
553514  
553515  
553516  
553517  
553518  
553519  
553520  
553521  
553522  
553523  
553524  
553525  
553526  
553527  
553528  
553529  
553530  
553531  
553532  
553533  
553534  
553535  
553536  
553537  
553538  
553539  
553540  
553541  
553542  
553543  
553544  
553545  
553546  
553547  
553548  
553549  
553550  
553551  
553552  
553553  
553554  
553555  
553556  
553557  
553558  
553559  
553560  
553561  
553562  
553563  
553564  
553565  
553566  
553567  
553568  
553569  
553570  
553571  
553572  
553573  
553574  
553575  
553576  
553577  
553578  
553579  
553580  
553581  
553582  
553583  
553584  
553585  
553586  
553587  
553588  
553589  
553590  
553591  
553592  
553593  
553594  
553595  
553596  
553597  
553598  
553599  
553600  
553601  
553602  
553603  
553604  
553605  
553606  
553607  
553608  
553609  
553610  
553611  
553612  
553613  
553614  
553615  
553616  
553617  
553618  
553619  
553620  
553621  
553622  
553623  
553624  
553625  
553626  
553627  
553628  
553629  
553630  
553631  
553632  
553633  
553634  
553635  
553636  
553637  
553638  
553639  
553640  
553641  
553642  
553643  
553644  
553645  
553646  
553647  
553648  
553649  
553650  
553651  
553652  
553653  
553654  
553655  
553656  
553657  
553658  
553659  
553660  
553661  
553662  
553663  
553664  
553665  
553666  
553667  
553668  
553669  
553670  
553671  
553672  
553673  
553674  
553675  
553676  
553677  
553678  
553679  
553680  
553681  
553682  
553683  
553684  
553685  
553686  
553687  
553688  
553689  
553690  
553691  
553692  
553693  
553694  
553695  
553696  
553697  
553698  
553699  
553700  
553701  
553702  
553703  
553704  
553705  
553706  
553707  
553708  
553709  
553710  
553711  
553712  
553713  
553714  
553715  
553716  
553717  
553718  
553719  
553720  
553721  
553722  
553723  
553724  
553725  
553726  
553727  
553728  
553729  
553730  
553731  
553732  
553733  
553734  
553735  
553736  
553737  
553738  
553739  
5537340  
5537341  
5537342  
5537343  
5537344  
5537345  
5537346  
5537347  
5537348  
5537349  
5537350  
5537351  
5537352  
5537353  
5537354  
5537355  
5537356  
5537357  
5537358  
5537359  
55373510  
55373511  
55373512  
55373513  
55373514  
55373515  
55373516  
55373517  
55373518  
55373519  
55373520  
55373521  
55373522  
55373523  
55373524  
55373525  
55373526  
55373527  
55373528  
55373529  
55373530  
55373531  
55373532  
55373533  
55373534  
55373535  
55373536  
55373537  
55373538  
55373539  
55373540  
55373541  
55373542  
55373543  
55373544  
55373545  
55373546  
55373547  
55373548  
55373549  
55373550  
55373551  
55373552  
55373553  
55373554  
55373555  
55373556  
55373557  
55373558  
55373559  
55373560  
55373561  
55373562  
55373563  
55373564  
55373565  
55373566  
55373567  
55373568  
55373569  
55373570  
55373571  
55373572  
55373573  
55373574  
55373575  
55373576  
55373577  
55373578  
55373579  
55373580  
55373581  
55373582  
55373583  
55373584  
55373585  
55373586  
55373587  
55373588  
55373589  
55373590  
55373591  
55373592  
55373593  
55373594  
55373595  
55373596  
55373597  
55373598  
55373599  
553735100  
553735101  
553735102  
553735103  
553735104  
553735105  
553735106  
553735107  
553735108  
553735109  
553735110  
553735111  
553735112  
553735113  
553735114  
553735115  
553735116  
553735117  
553735118  
553735119  
553735120  
553735121  
553735122  
553735123  
553735124  
553735125  
553735126  
553735127  
553735128  
553735129  
553735130  
553735131  
553735132  
553735133  
553735134  
553735135  
553735136  
553735137  
553735138  
553735139  
553735140  
553735141  
553735142  
553735143  
553735144  
553735145  
553735146  
553735147  
553735148  
553735149  
553735150  
553735151  
553735152  
553735153  
553735154  
553735155  
553735156  
553735157  
553735158  
553735159  
553735160  
553735161  
553735162  
553735163  
553735164  
553735165  
553735166  
553735167  
553735168  
553735169  
553735170  
553735171  
553735172  
553735173  
553735174  
553735175  
553735176  
553735177  
553735178  
553735179  
553735180  
553735181  
553735182  
553735183  
553735184  
553735185  
553735186  
553735187  
553735188  
553735189  
553735190  
553735191  
553735192  
553735193  
553735194  
553735195  
553735196  
553735197  
553735198  
553735199  
553735200  
553735201  
553735202  
553735203  
553735204  
553735205  
553735206  
553735207  
553735208  
553735209  
553735210  
553735211  
553735212  
553735213  
553735214  
553

1 1, 1998 and his trial in March 2001, three statutory factors, among others,<sup>1</sup> must be considered in  
 2 deciding whether to dismiss the charges with or without prejudice: "the seriousness of the  
 3 offense; the facts and circumstances of the case which led to the dismissal; and the impact of a  
 4 reprocution on the administration of this chapter and on the administration of justice." 18  
 5 U.S.C. § 3162(a)(2); *United States v. Medina*, 524 F.3d 974 (9<sup>th</sup> Cir. 2008). "[C]ourts are not  
 6 free simply to exercise their equitable powers in fashioning an appropriate remedy, but, in order  
 7 to proceed under the Act, must consider at least the three specified factors ." *United States v.*  
 8 *Taylor*, 487 U.S. 326, 333, 108 S.Ct. 2413, 2417, 101 L.Ed. 2d 297 (1988). The decision must  
 9 be based on the particular facts of each case; there is no presumption in favor of either sanction.  
 10 *Id.* at 334, 108 S.Ct. at 2418.

11 **1. Defendant Lewis's Crimes Were Serious**

12 Felony crimes carrying a substantial penalty and/or those having a significant social impact  
 13 are "serious" crimes. See, e.g. *United States v. Pena-Carillo*, 46 F.3d 879, 882 (9th Cir.) (illegal  
 14 reentry after felony conviction is a "moderately serious offense") *cert. denied*, 514 U.S. 1122,  
 15 115 S.Ct. 1990, 131 L.Ed.2d 876 (1995); *United States v. Clymer*, 25 F.3d 824, 831 (9<sup>th</sup> Cir.  
 16 1994) (conspiracy to distribute and aiding and abetting the manufacture of methamphetamine are  
 17 undoubtedly serious); *United States v. Castle*, 906 F.2d 134, 138 (5th Cir.1990) (offense  
 18 punishable by twenty years a serious offense); *United States v. Melguizo*, 824 F.2d 370, 371 (5th  
 19 Cir. 1987) (the potential term of imprisonment is an indication of the seriousness of the offense;  
 20 ten years a serious offense).<sup>2</sup>

21

---

22 <sup>1</sup> The Supreme Court has held that Congress intended prejudice to the defendant be weighed as a fourth factor  
 23 and it is addressed herein. *United States v. Lewis*, 518 F.3d 1171, 1176 (9<sup>th</sup> Cir. 1984) (relying on *United States v.*  
*Taylor*, 487 U.S. 326, 333, 108 S.Ct. 2413, 2417, 101 L.Ed. 2d 297 (1988)).

24 <sup>2</sup> See *United States v. May*, 819 F.2d 531, 534 (5th Cir. 1987) (five counts of possession with intent to  
 25 distribute controlled substances); *United States v. Stayton*, 791 F.2d 17, 21 (2d Cir. 1986) (trafficking in 200 kg. of  
 26 phenylacetone to be used in methamphetamine manufacture); *United States v. Simmons*, 786 F.2d 479, 485 (2d  
 27 Cir. 1986) (several counts involving a 'relatively small quantity' of substances); *United States v. Phillips*, 775  
 28 F.2d 1454, 1456 (11th Cir. 1985) (several offenses involving marijuana importation); *United States v. Brown*,  
 770 F.2d 241, 244 (1st Cir. 1985), *cert. denied*, 474 U.S. 1064 (1986) (distribution and conspiracy to distribute  
 four ounces of cocaine with a wholesale value of \$10,000); *United States v. Russo*, 741 F.2d 1264, 1267 (11th

1 Offenses that courts have not deemed sufficiently serious for purposes of this analysis  
 2 include, for example, mail theft of a ring (*United States v. Caparella*, 716 F.2d 976, 980 (2d Cir.  
 3 1983)) and mail theft of a check *United States v. Jersey*, 630 F. Supp. 695, 698 (S.D.N.Y. 1986).

4 In his first trial, Defendant Lewis was charged with, and convicted of, 17 felonies related to  
 5 trafficking in protected wildlife including smuggling, which has a maximum penalty of 5 years  
 6 imprisonment and a \$250,000 fine; and money laundering, which has a maximum penalty of 20  
 7 years imprisonment and a \$500,000 fine. The convictions were based on Lewis's intentional  
 8 importation, for resale, of six illegal shipments of approximately 125 animals protected by  
 9 domestic law and international treaty, many of which died in transit. Judge Jenkins sentenced the  
 10 Defendant to 36 months imprisonment. In Lewis's second trial, he was found guilty of a subset  
 11 of these original felony offenses and was sentenced to 23 months in prison. These crimes are  
 12 "serious" within the context of the Act and the standard established by courts which have  
 13 addressed this issue, as described above.

14 **2. Facts and Circumstances Of The Delay Do Not Justify Dismissal With Prejudice**

15 The second factor, the circumstances of dismissal, requires consideration of the government's  
 16 reason for having violated the STA. *United States v. Martinez-Espinoza*, 299 F.3d 414, 418 (5<sup>th</sup>  
 17 Cir) cert. denied 123 S.Ct. 2662 (2003). As has been exhaustively argued in prior pleading, the  
 18 government litigated this complex case in a manner that sought to preserve the possibility of  
 19 possibility of a joint trial including defendants Lewis, Wong, Burroughs and the Arizona  
 20 defendants. Defendant Lewis was not a peripheral player in the conspiracy charged; he was a  
 21 leader and recruiter of others, decided what animals would be ordered, and arranged the timing  
 22 and manner of the shipments with Wong and Miller.

23 The total non-excludable delay beyond the STA's 70-day deadline during the 17-month  
 24 period between arraignment and trial amounts to, at most, 75 days. It was the result of the

---

25  
 26 Cir. 1984) (several offenses involving methaqualone); *United States v. Carreon*, 626 F.2d 528, 533 (7th  
 27 Cir. 1980) (one count of conspiracy to distribute heroin and seven counts of heroin distribution); *United States v.*  
*Veillette*, 654 F.Supp. 1260, 1263 (D. Me. 1987) (possession of 280 grams of cocaine with intent to distribute); *United States v. Green*, 582 F. Supp. 265, 267 (D. Colo. 1984) (one count of distribution of a schedule II drug).

1 government's (and Judge Jenkins's) good-faith reliance on the Act's exclusion of time for pre-  
2 trial motions. The government respectfully suggests that only minimal "culpability for the delay-  
3 producing conduct" should accrue to the government for failing to foresee the Ninth Circuit's use  
4 of a footnote in *Clymer* to narrow the exclusion of time allowed for pre-trial motions decided  
5 prior to trial. *United States v. Saltzman*, 984 F.2d 1087, 1093 (10th Cir. 1993), quoting *United*  
6 *States v. Hastings*, 847 F.2d 920, 925 (1st Cir. 1988). Therefore, this prong of the analysis does  
7 not justify dismissal with prejudice.

8 **3. Impact Of Re-prosecution On The Administration Of The Speedy Trial Act And The**  
9 **Administration Of Justice**

10 The primary consideration when analyzing this factor is whether dismissal with prejudice is  
11 needed to penalize unexecuted and/or bad faith delay. *Medina, supra* at 988, (relying on *United*  
12 *States v. Taylor*, 487 U.S. 326, 343 (1988)). Put another way, the question is whether the  
13 defendant suffered actual prejudice as a result of the delay and whether the government engaged  
14 in "prosecutorial misconduct that must be deterred to ensure compliance with the Act." See, e.g.  
15 *United States v. Pierce*, 17 F.3d 146, 149 (6<sup>th</sup> Cir. 1994). When the charge is "serious," as it is  
16 here, "courts should impose the sanction of dismissal with prejudice only for a correspondingly  
17 serious delay, especially in the absence of prejudice." *United States v. May*, 819 F.2d 531, 534  
18 (5th Cir. 1987).

19 The only arguable prejudice here is delay and the change of attorneys between charging and  
20 trial. Mere delay is not enough: the defendant has been un-detained throughout these  
21 proceedings and has made no assertion of missing or memory-impaired witnesses. The  
22 defendant's discomfiture at the replacement of his first attorney is also insufficient to warrant a  
23 finding of substantial prejudice to him. Mr. Lewis has been represented by appointed counsel  
24 throughout these proceedings. His first attorney left the case in June 2000 to take a job overseas:  
25 his present counsel has represented him since, through two lengthy trials, appellate and post-  
26 appeal litigation. At no time in these proceedings has the defendant expressed any complaint  
27 about the quality or attentiveness of his present counsel. The Supreme Court has held that "the  
28

1 right to counsel of choice does not extend to defendants who require counsel to be appointed for  
2 them.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151, 26 S.Ct. 2557 (2006), *quoted in*  
3 *United States v. Ensign*, 491 F.3d 1109, 1113 (9<sup>th</sup> Cir. 2007) [affirming trial court decision, over  
4 the defendant’s objection, to terminate representation of appointed attorney]. Moreover, the loss  
5 of the defendant’s first attorney and, arguably, a significant portion of the delay in this case,  
6 occurred at least in part because he did not seek a severance at the time he was seeking a prompt  
7 trial. This fact is not insignificant: the procedural rules, the goals of judicial economy and  
8 common sense support the idea of jointly trying defendants who are charged together, especially  
9 in conspiracy cases. The record in this case does not support a finding that dismissal with  
10 prejudice is necessary to penalize negligent or bad-faith delay or otherwise ensure a salutary  
11 impact on the administration of justice. Indeed, the opposite conclusion is well-justified in light  
12 of the facts and circumstances leading to the apparent STA violation here.

13 **II. CONCLUSION**

14 For all the reasons set forth herein, the government respectfully requests the Court dismiss  
15 the charges in this matter without prejudice.

16 Dated: December 24, 2008

Respectfully submitted,

17  
18 JOSEPH P. RUSSONIELLO  
19 United States Attorney

20  
21 /s/  
22 ROBERT S. ANDERSON  
23 Special Assistant United States Attorney

24  
25  
26  
27  
28 UNITED STATES’ BRIEF IN  
SUPPORT OF DISMISSAL WITHOUT  
PREJUDICE

1 CERTIFICATE OF SERVICE  
2  
3

4 I, Rayneisha Booth , hereby certify that on the 24th day of December, 2008, I sent a true and  
5 correct copy of this memorandum and attachments by facsimile to:  
6  
7

8 Dean D. Paik, Esq.,  
9 Cohen & Paik, LLP  
10 177 Post Street, Suite 600  
11 San Francisco, CA 94108  
12 415-398-3900  
13 Attorney for defendant Lewis  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RAYNEISHA A. BOOTH  
Legal Assistant

UNITED STATES' BRIEF IN  
SUPPORT OF DISMISSAL WITHOUT  
PREJUDICE